

## Section 106 Review Process

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## What is Section 106?

- Refers to Section 106 of the National Historic Preservation Act (NHPA) of 1966.
- The NHPA requires Federal agencies to:
  - 1) “take into account” effects of their actions on historic properties, and
  - 2) afford the Advisory Council on Historic Preservation a “reasonable opportunity” to provide comment.
- Section 106 applies to Federal undertakings.

36 CFR Part 800

## What are Undertakings?

A project, activity, or program:

- funded in whole or in part by a Federal agency;
- carried out by or on behalf of a Federal agency;
- carried out with Federal financial assistance; or
- requiring a Federal permit, license, or approval.

## Principles of Section 106

- ALL types of historic properties must be considered.
- Purpose is NOT to ensure preservation of ALL historic properties.
- Historic Preservation should be balanced along with other public interests.



## Timing of the Section 106 Consultation Process

- Consultation should be initiated with the participants during the early stages of project planning.
- **Must** be completed prior to the initiation of project activities, issuance of a license or the release of Federal funds.
- Projects to be implemented in phases must undergo the Section 106 review at the outset.

## Participants

- Federal Agency or their delegates (e.g., Cities, IDED, IDOT, IDNR, etc.)
- Advisory Council on Historic Preservation
- Consulting Parties
  - State/Tribal Historic Preservation Offices
  - Indian Tribes & Native Hawaiian organizations
  - Local governments
  - Applicants
  - Other parties with a “demonstrated interest”
- Public

## Participants

### Indian Tribes

- Currently, there are no THPOs in Iowa
- Federal agency consults directly with tribe's designated representative
- SHPO is not usually involved in tribal consultation

36 CFR Part 800.2(c)(2)

## Participants

### Parties with a "demonstrated interest"

- Local historic preservation commissions ([www.iowahistory.org/historic-preservation/](http://www.iowahistory.org/historic-preservation/) under "Local Preservation Programs & CLGs")
- Main Street organizations ([www.mainstreetiowa.org](http://www.mainstreetiowa.org) under "Communities")
- Historical organizations

36 CFR Part 800.2(c)(5)

## Participants



### Ways to involve the public

- Schedule time to discuss the project during a public meeting (HPC, City Council, etc.)
- Discuss the project at a neighborhood meeting or in a neighborhood newsletter
- Post information about a project in public spots:
  - Post Office/Library
  - City/County offices and/or website
  - Local Newspaper (not the small print)

## Basic Steps

**Initiate**  
**Identify**  
**Assess**  
**Resolve**

## 1. Initiate the Process

- Establish whether there is an undertaking and whether it could affect historic properties.
- Coordinate with other reviews, such as NEPA (National Environmental Policy Act).
- Identify consulting parties: SHPO/THPO, local governments, applicants.
- Plan to involve the public!



36 CFR Part 800.3

## 1. Initiate the Process

### Multiple Federal Agencies

- Designate a "Lead" federal agency (often, this will be the agency with the most funding in the project)
- Document it in a letter agreement or PA
- Let SHPO know which agencies are involved, what their role is, and who is taking the lead

36 CFR Part 800.2(a)(2)



## 2. Identify Historic Properties

Area of Potential Effects will vary:

- Rehab
- New construction
  - Housing/Community Facilities
  - Water towers or vertical infrastructure
- Sewer separation
- et cetera...

36 CFR Part 800.4

## What are historic properties?

- Must meet criteria for listing in the *National Register of Historic Places* (36 CFR Part 63):
  - A -- Association with events, patterns
  - B -- Association with important people
  - C -- Distinctive characteristics
    - Type, style, school of architecture
    - Work of a master, high artistic value
  - D -- Important data in history, prehistory; and must have INTEGRITY

## Phased Efforts

- Phasing of identification/evaluation, and determination of adverse effect is applicable for:
  - Corridors
  - Large land areas
  - Where access to properties is restricted
- Findings and determinations must be consistent.
- Deferral of final findings and determination allowed if authorized in MOAs, PAs, or NEPA documents.

## “No Historic Properties Affected” Finding

- Appropriate when:
  - the Agency has determined (through a consensus determination or determination by the Keeper) that no historic properties are present in the APE; or
  - there are historic properties present but the undertaking will not have any effect on them



### 3. Assess Effects

Effects may be:

- Direct or indirect
- Temporary or permanent
- Reasonably foreseeable or cumulative

36 CFR Part 800.5

### Criteria of Adverse Effect

- Physical destruction of or damage.
- Alteration of the property, including rehabilitation that is not consistent with the Secretary of DOI's *Standards for the Treatment of Historic Properties*.
- Removal of the property from its historic setting.
- Introduction of visual, atmospheric, or audible elements that diminish its integrity.

### No Adverse Effect finding

- If historic properties will not be adversely affected, the Agency notifies all consulting parties of its finding and provides background documentation. The consulting parties have **30 days** to respond.
- Council could be involved.

### 4. Resolve Adverse Effects

- Resolution ≠ stopping the project
- Resolution may include:
  - Avoiding the adverse effect,
  - minimizing the adverse effect, and/or
  - mitigating the adverse effect
- Memorandum of Agreement (MOA) is often required.

### 4. Resolve Adverse Effects

- Involve local consulting parties
- Involve the public (again!)
- Invite the Advisory Council into consultation



A collage of images related to historic preservation. It includes a large brick building with the text 'The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring &amp; Reconstructing Historic Buildings', a smaller house with the text 'Leading Double Lives: A Challenge of Preservation and Revival', a photograph of a house, and architectural plans labeled 'FIRST FLOOR PLAN'. The word 'Resolve' is written in a large font at the bottom right of the collage.

## [ Important Internet Resources ]

- National Historic Preservation Act (NHPA)  
[www.achp.gov/NHPA.pdf](http://www.achp.gov/NHPA.pdf)
- Section 106 of the NHPA (36 CFR Part 800)  
[www.achp.gov/regs-rev04.pdf](http://www.achp.gov/regs-rev04.pdf)
- Other Section 106 guidance at  
[www.achp.gov/work106.html](http://www.achp.gov/work106.html)
- Other Cultural Resource Laws  
[www.nps.gov/history/laws.htm](http://www.nps.gov/history/laws.htm)

## [ What Happens When the Agency Does Not Comply ]

- Litigation
  - Anyone can **sue**
  - Often results in injunction, project delay
  - Procedural basis is most successful
- Administrative, Congressional, Public
  - Foreclosure of Council comment
  - Citizen complaints to Council, Congress, President

## [ Questions? ]

